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The Solicitors' Journal.

LONDON, SEPTEMBER 13, 1873.

WHEN THE JUDICATURE ACT comes into operation the time-honoured system of special pleading will be at an end. The question, the solution of which can only be worked out *ambulando*, is what is to be the substitute for it. The old system of common law pleading was one in which the case was only stated in the form of general allegations, the particular facts in support of which were gone into in detail as matters of evidence at the trial. The Chancery system of pleading, on the other hand, dealing with cases where the same mind is judge both of law and of facts, has always been to plead what, in a common lawyer's point of view, is not matter of pleading, but of evidence. The new Bill provides in the schedule of rules that there shall be a short statement of facts on the part of both parties. It is easy to see that considerable difficulties lie ahead of us before some generally satisfactory system of legal pleading is established. It has often been urged in discussion, with reference to legal reforms, that we ought to have a system of pleading that would avoid, on the one hand, the technical abstractions of common law pleading, and, on the other, the system of pleading mere evidence which prevails in Chancery; that the facts should be shortly stated, not the evidence in support of them. It appears to us that it will not be so easy to attain this happy mean as is supposed, because there is really no such distinct line of demarcation between facts and the evidence of facts as is supposed. What are often loosely called facts are in truth only conclusions or inferences from facts. Take, for instance, the case where a contract for sale of goods is to be gathered from a variety of documents and facts which possibly the defendant may allege not to have amounted to any contract at all. How is the plaintiff to frame his statement? Is he to assert that there was a contract, or to set out the facts from which he alleges the contract to arise? If the latter, then possibly, when the defendant comes to make his defence, he will not deny the contract at all, but contend that the goods delivered were not in accordance with the contract; in such case the pleadings will have been hampered with unnecessary matter. Or, again, the defendant may admit some of the facts alleged, and deny others, or may wish to add facts and documents. It is difficult to see how it will be possible to avoid pleading what is really evidence in such cases unless each party is to confine himself to the allegation of general legal conclusions. It seems to us not altogether plain what the framers of the Act really contemplate, whether, in fact, they intend the new system of pleading to resemble the old common law system, or to approximate more nearly to that of Chancery pleading, or to be partly one, partly the other.

There is an advantage in connection with a system which pleads facts over a system of general allegations which is not sufficiently considered in our common law system. One great *desideratum* of pleading would appear to be to confine the parties as far as possible to the real merits of the case, meaning thereby the causes which have really led to the dispute between them, and as soon as possible to elicit what the case of each party is, and to fix him to it No facilities should be provided for a party's putting his opponent to proof of what he knows perfectly well to be true, and is not in a condition to dispute, because he conceives himself entitled to succeed on some other issue. A man who really refuses to accept goods because they are not equal to sample should not be encouraged to traverse the contract and trust to some flaw which a skilful counsel may pick out at the trial in his opponent's proof. You cannot prevent a defendant's taking advantage of unmeritorious defences, but notice should be given of them to the other party at the earliest possible period. When statements of facts supersede the ancient mode of pleading it will be for the judges to say what is the reasonable construction to be placed on such statements. They will, if one may conjecture, in fact, be in the nature of particulars of the cases of the respective parties, and it seems to us that they ought to be construed, not according to the technical rules of ancient pleading, but that the judge ought to see whether they give fair notice according to an unartificial construction of the line of attack or defence to be adopted. For instance, if the plaintiff says there was a contract, and the defendant says there was not, the defendant ought not to be able to set up at the trial that there was no memorandum to satisfy the 17th section of the Statute of Frauds, because in strict technicality of law there is no contract unless the statute is satisfied. The law ought to do all it can to destroy the notion too naturally resulting from the former narrowness and technicality of our legal system, that an action is a game of chicanery, in which a man is, if possible, to conceal his hand till the last moment.

THE COURT OF CHANCERY, by appointing one day in every week for its sitting during vacation, has invited a large amount of business—an invitation which suitors have not failed to take advantage of. On Wednesday, the 13th and 20th of August, Vice-Chancellor Bacon sat for the Master of the Rolls, who is the vacation judge, and further acted for him up to the 22nd, and during that period disposed of 36 applications. The Lord Chancellor was the deputy of the Master of the Rolls during the third week, and he disposed of 33 applications. On the 3rd of September the Lord Chancellor attended, when Sir George Jessel was sworn in as Master of the Rolls, in whose favour the Lord Chancellor vacated his seat, and thenceforth Sir George Jessel takes the vacation business. On that day 30 applications were disposed of, the first order made by the new Master of the Rolls being in the suit of *Middlebrook* v. *Heaton*, to turn over a prisoner in Lancaster Gaol to Holloway Prison for contempt of Court. On the 10th of September 17 applications were disposed of in Court, and we find that, including several orders made on other than the appointed day, 118 applications have been made to the Court of Chancery during the existing vacation.

The business in chambers has also, we understand, been very heavy, comprising numerous applications of an important nature, besides the routine business of applications for time. The vacation registrar has had his hands full, and the four working days of each week have not, in fact, always sufficed to meet the calls made upon him. We find, on inquiry, that, including those from Court and from Chambers, he has had 150 orders to draw up and pass since the 10th of August. It must be borne in mind that the greater part of the orders made in Chambers are not sent to the registrar to draw up, and that only the more important orders come to him.

In the fact that the Court is sitting in London, and not at a distance of fifty or one hundred miles, the suitors have much to be grateful for, and if the calculation of a recent correspondent of the *Times* is correct it is no difficult task to estimate what the saving has been upon the 118 applications already disposed of. We have always contended that it was a practical denial of justice in many cases to allow the judge to re-

move himself from the centre of business in vacation time, and we believe the present arrangement is due solely to the wise counsels of Lord Selborne.

It is stated that the Government of India has circulated for the criticism of the judges of that country a proposal for the appointment of a staff of reporters for the High Courts of the various provinces under the control of a "central editor," who is to exercise the important function of deciding what reports are to appear. Each judge, however, is to have an absolute power of forbidding the publication of the report of any case before him which he may deem "not suited to be made into a precedent," and the full bench is, on the other hand, to be invested with the power of ordering any case to be reported. We have not before us the full details of the scheme, and without these it would hardly be possible to form a decided opinion upon it. We do not know, for instance, whether it is intended that only the Government reports shall be allowed to be cited in Court. If this is not intended, the result of the scheme will simply be to add another to the rival sets of law reports spoken of as already existing in India; and all the elaborate provisions with refer ence to controlling the reporting of cases will obviously be futile. If, as appears more probable, it is meant to give an exclusive privilege to the State reporters, then all the evils attending a monopoly may be expected to ensue. The wholesome stimulus of competition being removed, months will elapse before reports of important cases appear; the reporters will do their work with the energy and interest well known to characterise Government officials, and the profession will be compelled to pay whatever price the Administration think fit to place on the reports. We are very incredulous as to the advantages, even in a country like India, of Government patronage of law reporting; and with reference to the control proposed to be given to the judges over the selection of cases, we may note that the committee of the Bar Association of New York, which recently considered the means of improving the law reporting in that State, came to the conclusion that the reporter ought not to be in any way dependent on the Court. They add, as it seems to us with great truth, that "in a free country it is well that the Courts should feel that they are acting before an intelligent and reading public, to whom their decisions will certainly become known, *through fearless and independent reporters.*"

The indefatigable Mr. Bass last session moved for and obtained a return from every County Court of the number of plaints entered in 1872, and of the number of persons imprisoned in that year, with various particulars intended to support the measures in which that gentleman takes so active an interest. The return has just been issued, and certainly contains some rather remarkable facts. One column is devoted to the plaints entered for sums not exceeding one shilling, and it appears that the number of these last year was 1,353. It will probably be somewhat of a disappointment to Mr. Bass to find that in the corresponding column devoted to the number of persons imprisoned where the sum in respect of which default was made did not exceed one shilling, the return is 0. 66,064 plaints were entered and 26 persons imprisoned for sums under five shillings. The total number of plaints entered was 900,763 and the total number of persons imprisoned, 6,993. Turning to the returns for the various County Court Circuits there appear some contrasts in respect to the proportion between the number of plaints entered and the number of persons imprisoned for which local circumstances may account, but of which we shall doubtless hear much in the next session. Thus in Circuit No. 16 (Hull) 11,881 plaints were entered and only 14 persons imprisoned, while in Circuit No. 36 (Warwick) about the same number (11,895) of plaints were entered but 49 persons were imprisoned. The largest number of commitments was in Circuit No. 7 (Birkenhead, Warrington, &c.) in which 565 persons are returned as having been imprisoned.

WARRANTY OF AUTHORITY BY DIRECTORS.

If the directors or agents of a public company enter into a contract on their behalf which is beyond the scope of their authority, are they answerable to the person with whom they affected to make this contract and who is unable to enforce it, for a breach of an implied warranty that they had authority to make it? Or in other words, do they in every case where they affect to make such a contract impliedly warrant that they have authority to make it? The peculiarity which distinguishes the case of directors acting for a company from the case of persons acting as agents for a private individual is this, that they act for a principal of limited capacity. A company cannot do all the things that a private person can, and as to some of the things which it can do it can only do them in a particular way prescribed by its private Act, deed of settlement, rules, or articles of association, as for instance by special resolution. Now there is no doubt that if a person assumes to act as director he warrants that he is a director, and is liable in respect of contracts which he assumes to make in that character. The difficulty arises in the cases where he is in truth a director, but the contract he has assumed to make is one that his principal has no power to make at all, or has no power to make except in a particular way.

But when these last two cases are looked at they seem to differ very much from one another. And the cases where the thing is within the power of the company to do are found also to be of two kinds. The company speak once in their articles of association, deed of settlement, &c., and they there declare that the directors shall have certain powers. But they at the same time provide for their speaking again, namely by general meeting, and giving further powers to the directors, through whom all their acts must ultimately be accomplished. It is matter of detail how this utterance is allowed to take place. Now the rule as to warranty of authority seems quite to cover the case where, in this sense, the company may authorise, but have not authorised, the directors to contract, and to this class belongs *Cherry* v. *Colonial Bank of Australasia* (17 W. R. 1031, L. R. 3 P. C. 24.)

But the case is different where by the general law a thing cannot be done except in a particular mode marked out by statute, as, for instance, in the case of alterations in the memorandum or articles of association, as provided by sections 12 and 50 of the Companies Act, 1862. Here, until the statutory formality is complied with, the company cannot be said to have the power which by means of the requisite formality they may obtain; they have only the faculty of acquiring it. This case therefore seems to approach the case where they have not the power of doing the thing at all. Now, apart from the case of directors, we do not know that it has ever been held that a person contracting as agent warrants that the person for whom he assumes to act had the legal power to authorise him; if, for instance, his principal is an infant assuming to be an adult, or a married woman assuming to be unmarried, or a widow. Such a case is, indeed, within the terms in which the rule has been laid down; but it is not clear that it is within the reason of the rule, which does not seem to require that the agent should be held to warrant that which he cannot reasonably be expected to know.

But however this may be in other cases, a director may certainly be reasonably expected to know whether he has the power to act for the company which he assumes to possess. The question, however, arises, whether the other contracting party must not be reasonably expected to know also. Now, in the case where, by the general law, there is no power in the company to authorise the doing of what the directors have assumed to do, there is autho-

rity for saying that the other contracting party may be expected to know this as well as the directors.

The case of *Beattie* v. *Lord Ebury* (20 W. R. 994, L. R. 7 Ch. 804) is somewhat difficult to deal with. As to a great deal that was there relied upon as matter of representation and warranty, it is clear there was no such thing at all. But the substance of the case turns on the overdrawing, which was in substance a borrowing, by the directors. As to this, Mellish, L.J., expresses himself as follows (p. 996):—"I think when it (the letter) says, 'Please to honour the cheques of this company signed by two of the directors, and countersigned by the secretary,' that is a representation that the directors had agreed to open an account with the Union Bank, and that the cheques which would be drawn upon that account would be signed by two of the directors and the secretary. Does it represent anything more? What does it represent respecting the authority of the directors to overdraw? Does it represent more, or could it be understood by the manager of the bank to represent more, than that they had the ordinary authority, whatever that may be, of railway directors to bind the company? It surely does not represent, and could not be fairly or properly understood to mean, that the directors of the Watford and Rickmansworth Railway Company had some power to bind their company beyond that which the directors of other railway companies in the kingdom have." Now there was certainly no representation that the defendants had any power other than that which railway directors ordinarily have; but there was an assumption on their part, and an acting on the assumption, which, if their principals had been private individuals, would have amounted to a representation that they had the authority to overdraw. Therefore, as the directors could not claim to be ignorant of their legal powers as agents of the company, the question necessarily arose whether the plaintiffs, who knew that the defendants were railway directors, and with the ordinary powers of railway directors, must not be taken to know the law, that is to know the extent of their powers in this matter; whether, in short, they must not be taken to have dealt with them on the same footing as if they were persons who had opened a banking account with them on behalf of a private individual with notice of limited powers which excluded overdrawing in that way. This in substance is what was held, and in so holding Mellish, L.J., referred to and approved of the case of *Rashdall* v. *Ford* (14 W. R. 950, L. R. 2 Eq. 750), where it was decided that directors were not liable in respect of their issue of a Lloyd's bond, for which there was no existing ground of obligation on the company, and where, therefore, the bond did not bind the company. Thus, two out of the three cases above mentioned seem (subject to what follows as to *Weeks* v. *Propert*) to be covered by decision, the case in the Privy Council deciding that where the company might authorise but have not authorised the directors to contract, the directors contracting are liable on the implied warranty; the cases in Chancery deciding that where the company have, by the general law, no power to authorise the contract, the directors are not liable.

But to which side does the intermediate class belong, cases, namely, where the company did not possess the power which the directors assumed to exercise on their behalf, but where they had the faculty of acquiring it? This also seems decided by *Richardson* v. *Williamson* (L. R. 6 Q. B. 276, 19 W. R. C. L. Dig. 87). The assumed principal there was a benefit building society, which had no rule empowering the society to borrow money; the plaintiff, therefore, who had lent money to the directors on behalf of the society, had no remedy against the society (*Re National Permanent Benefit Building Society*, 18 W. R. 388, L. R. 5 Ch. 309). But the society might have had originally or might have adopted a rule empowering them to borrow to a limited amount (*Laing* v. *Reed*, 18 W. R. 76, L. R. 5 Ch. 4); and the rules, original and added, of such a society, under 6 & 7 Will. 4, c. 32, stand in a position analogous to that which the memorandum and articles of association, and alterations made in them by special resolution occupy, in the case of a company under the Companies Act, 1862. The Court, in that case, held the directors liable, and the decision is approved in *Beattie* v. *Lord Ebury*.

It is, however, somewhat difficult, at first sight, to reconcile with the cases in Chancery the recent decision of the Common Pleas in *Weeks* v. *Propert* (21 W. R. 676, L. R. 8 C. P. 427). In that case a railway company, of which the defendant was a director, had exhausted their borrowing powers, but they had the power of reborrowing to pay off the existing debt. They advertised for money for that purpose, specifying that it was "to replace loans falling due," and the plaintiff tendered a loan. His tender was accepted, and he remitted a cheque for the amount of a debenture bond, which cheque the directors passed on to a person who was supposed to be a debenture holder, with a request that he would remit a debenture to the plaintiff. But that person, who had already parted with his debentures, merely pocketed the money in part payment of an account he had against the company. Thereupon the directors issued to the plaintiff a new debenture bond which, as the old bond had not been got in, was in excess of the company's powers. It was in respect of this transaction that the plaintiff now sued the directors. The judgments in that case are not easy to follow, nor can we see that the expressions used by Honyman, J. (who alone discusses the law in any detail), do at all succeed in pointing out the distinction between the case before him and *Beattie* v. *Lord Ebury*. We cannot therefore be very sanguine of success in making a distinction, but there seems to be ground for the following suggestion:—In the case of *Beattie* v. *Lord Ebury* there was no pretence of executing a regular borrowing power; the borrowing was altogether, as a borrowing transaction, conducted in an irregular way. The legality of that way of dealing depended upon general principles and rules of law. But in *Weeks* v. *Propert* there was a pretence of executing a regular borrowing power, and that borrowing power did exist, and might have been exercised if only the right course had been taken; and as to the actual mode of its exercise or attempted exercise the plaintiff could know nothing, the defendants must know everything. Taken in this way the case seems to be considerably within *Richardson* v. *Williamson*, and even to be covered by *Cherry* v. *Colonial Bank of Australasia*.

But we cannot help asking whether the issue of the new bond was really the ground of the directors' liability, and whether in this action (where a case was stated without pleadings) a truer ground of liability might not have been discovered? The plaintiff did not advance his money against the bond at all; he had advanced it before the bond was issued. How, then, was he injured by the issuing of the bond? But he had advanced it on the advertisement, and if the terms of the advertisement had been adhered to the company would have been acting within its powers. He advanced his money to provide for "loans falling due," and the directors received it on that footing. If they had applied it to loans falling due, all would have been well; but instead of doing so they handed it over at once to a person who was supposed to be a creditor of the company in respect of some debenture bonds, but who was really nothing of the sort. We would suggest whether an action did not accrue to him on the undertaking of the directors that the money should be applied to loans falling due?

There is one point that ought to be noticed with respect to the class of cases covered by *Cherry* v. *Colonial Bank of Australasia*, we mean the obscure and difficult point as to the circumstances under which a company can be held liable where the acts done by the directors required what has been vaguely termed a "preliminary formality" (see *Fountaine* v. *Carmarthen Railway Company*, 16 W. R. 476, L. R. 5 Eq. 316, and the authorities referred to in that case). The importance

of the point is this, that notwithstanding the obscurity of this subject, the plaintiff will not in such doubtful cases be able safely to proceed against the directors until he has tried his fortune against the company.

WAIVER OF TORTS.

The case of *Smith* v. *Baker* (L. R. 8 C. P. 350), was a somewhat novel application of the principles of law relating to the affirmance of a tortious act and consequent waiver of the tort. The cases in which the question of waiver of a tort has been raised have most frequently been cases where the proceeds of a wrongful sale of the property converted have been received by the injured party or recovered by him in an action for money had and received against the wrongdoer. It may be doubted whether there have not been expressions used in the cases on this subject which tend to place a principle that is in itself most sound and expedient on a dangerously narrow and technical ground. The case of *Smith* v. *Baker* was this. The trustee of a bankrupt's estate applied under the 72nd section of the Bankruptcy Act, 1869, to the Court of Bankruptcy to declare a bill of sale, made by the bankrupt previously to his bankruptcy, fraudulent, and void as against himself as trustee, and to order the assignee under the bill of sale, who had, previously to the bankruptcy, sold the goods comprised therein, to pay over the proceeds of the sale to himself as such trustee. The Court of Bankruptcy having made the order prayed for, the assignee under the bill of sale accordingly paid over the proceeds of the sale to the trustee. The trustee afterwards brought an action of trover against the assignee under the bill of sale to recover the difference between the value of the goods and the amount realised by the sale. It was held that the action would not lie, on the ground that, by the proceedings in bankruptcy to recover the proceeds of the sale, the plaintiff had affirmed the sale and waived the tort. It was argued by the counsel for the defendant that the proceedings in bankruptcy were analogous to an action for money had and received, and that the law was clear that, by bringing an action for money had and received in respect of a tortious sale, the plaintiff waived the tort, and could not afterwards recover in trover. The doctrine that by bringing an action of money had and received the tort is waived is generally supported by reference to the case of *Smith* v. *Hodson* (2 Sm. L. C. 6th. ed. 119). In that case it was held that where the assignees of a bankrupt brought assumpsit to recover the proceeds of goods fraudulently delivered to a creditor by the bankrupt on the eve of bankruptcy, they affirmed the contract, and the creditor might set off his debt. The decision in this and similar cases is sometimes supported by reasoning of this sort. The plaintiff can only be entitled to recover the proceeds of the sale on the footing that the defendant was his agent to make it. He cannot therefore be allowed to blow hot and cold, to say in one action that the defendant was his agent, and then in another to turn round and say that he was a tort feasor. It seems to us that this is an unnecessarily narrow and technical ground on which to put the case. It is a way of looking at the matter which savours too much of legal subtlety, and does not correspond to the substantial realities of the case. There is probably no sort of intention in the mind of the party proceeding to waive the tort or any contemplation of the defendant as his agent. The defendant was not his agent in fact, nor did he mean to treat the defendant as such. His whole case is that the sale was a tort. He claims, in substance, to be entitled to the moneys as representing the property of which he has been wrongfully deprived, and, as representing such property, the defendant is obliged by the law to pay over the proceeds. A. having wrongfully taken and changed the form of B.'s property to some extent, why is not B., according to any sound general principle of jurisprudence, entitled to recover his property in its changed form without being held in any way to have affirmed A.'s act in changing the form in which it existed? And why should he be barred from recovering any loss to which he may have been put by reason of the change of form? The real reason for the soundness of the decisions appears to be founded upon an application of the maxim *nemo pro eadem causâ debet bis vexari*. If a man, having it in his power to bring an action in which he might recover, not only the amount of the proceeds of the tortious sale, but the full value of the goods, chooses to proceed in a form of action in which he can recover the former only, justice and expediency alike dictate that he should, by the fact of so proceeding, be held to have waived the right to take any other mode of proceeding. What occasion is there to have recourse to the fiction that he has treated the defendant as his agent? It is submitted that the form of action is what constitutes the waiver, not any election to treat the tort feasor as agent.

In *Smith* v. *Baker* the decision appears to be manifestly a correct one, because it is clear that the plaintiff might have equally well applied to the Court of Bankruptcy to make the defendant responsible for the full value of the goods under the 72nd section as to make him responsible for the proceeds. The section says nothing about the proceeds of the sale, but it gives the Court jurisdiction to apply any remedy which the justice of the case demands for the purpose of a proper distribution of the estate. The distinction above drawn may not appear very material in its application to the effect of bringing an action for money had and received as a waiver of a tort, inasmuch as it is admitted that such an action is a waiver of the tort for whatever reason it may be so; but the question is not without its importance in relation to other modes of waiver. If bringing an action for money had and received were a waiver for the reason that the plaintiff thereby must be considered as making the defendant his agent, it would very nearly follow, as a matter of logic, that the mere receipt of the proceeds of the goods by the party injured would have the same effect. If you cannot claim the proceeds of your goods that have been wrongfully taken from you and sold in an action for money received without thereby being taken to make the defendant your agent, it may be argued that you cannot claim them at all without the same effect being produced. Now, though receipt of the proceeds of goods converted may, in some cases, and under some circumstances, amount to waiver of the tort, as in the case of *Brewer* v. *Sparrow* (7 B. & C. 310), we cannot think that it can be the law that it would do so in all cases and under all circumstances. The plaintiff may have received them merely as representing the property which was his, and in mitigation of future damages, and not with the least intention of giving up his right of recovering any further damage he may have sustained. In such case the question of waiver is a question of intention—meaning by intention not so much the purpose which may have actually existed in the mind of the injured party as the purpose which, judging of his intention by the ordinary conduct of mankind, the tort feasor was entitled to presume from his conduct. Bovill, C.J., in his judgment in *Smith* v. *Baker*, speaks of the action for money had and received as amounting to a conclusive election in point of law to waive the tort, but he says, "There is another class of cases in which an act is of an ambiguous character, and may or may not be done with the intention of adopting and affirming the wrongful act; in such cases the question whether the tort has been waived becomes a matter rather of fact than of law." It seems a very strong measure to hold that mere receipt of the proceeds which, *ex æquo et bono*, belong to the owner of the property converted as representing that property in its converted state, should deprive the owner of any further remedy for the depreciation in value which such property has suffered by the process of conversion. The case of *Lythgoe* v. *Vernon* (5 H. & N. 180), which seems to go to the full length of the proposition we venture to con-

trovert, seems to have been very hastily decided on the authority of *Brewer* v. *Sparrow*. The latter case does not go anything like the length to which it seems to have been assumed to go in *Lythgoe* v. *Vernon*; there was much more than mere receipt of moneys, for the balance of an account was there received after an account had been rendered by the defendant of his dealings with the bankrupt's goods without any objection or difficulty raised by the plaintiffs. This was clearly good evidence of an intention to affirm the tortious act. The case of *Burn* v. *Morris* (4 Tyr. 485) was not cited in *Lythgoe* v. *Vernon*, in which case it was held that receipt of part of the proceeds of a tort did not waive the tort. It is to be observed that the plea in *Lythgoe* v. *Vernon* alleged a waiver of the tort; possibly this allegation may be read as implying a receipt of the money under such circumstances as to waive the tort, though it would seem a sounder construction to treat it only as an allegation of a conclusion of law arising out of the facts stated in the plea. The decision appears to us to be far from a satisfactory one, and with reference to the future decision of the question, if it should again be raised, it has seemed to us of some interest to discuss the exact principle upon which the action for money had and received is a waiver of a tort.

RECENT DECISIONS.

EQUITY.

REMEDY OF EQUITABLE MORTGAGEE BY MERE DEPOSIT.

James v. *James*, L.J.J. for V.C.W. 21 W. R. 522.

The question what remedy an equitable mortgagee by mere deposit is strictly entitled to has been much discussed, and perhaps even now cannot be said to be conclusively settled. In *Tuckley* v. *Thompson* (8 W. R. 302, 1 J. & H. 126) Wood, V.C., after an elaborate review of the authorities, intimated a strong opinion that the proper and only remedy was by sale. This view is dissented from by Mr. Fisher (Fisher on Mortgages, p. 521, 2 ed.), who seems to consider that the mortgagee is entitled to foreclosure or sale at his option. But in the recent case of *James* v. *James* foreclosure was held to be the sole remedy, and the decision derives additional weight from the fact that the Court considered the point settled by a decision of the Full Court of Appeal in *Pryce* v. *Bury* (2 W. R. 216). *Samble* v. *Wilson* (5 N. R. 395) is an authority to the same effect, apparently not cited in the argument. So that at present there seems to be a considerable preponderance of authority in favour of the view that the proper remedy of the mortgagee is foreclosure.

EQUITABLE SECURITIES AFFECTING LAND IN REGISTER COUNTIES.

Re Wright's Mortgage Trusts, V.C.M., 21 W. R. 667, L. R. 16 Eq. 41.

An impression long prevailed, and we fancy is not yet entirely exploded, that instruments affecting lands in register counties but operating merely as equitable mortgages or charges do not require or admit of registration. It is of course evident that in the case of a mere deposit of deeds without any writing there is nothing to register, and accordingly it was decided in *Sumpter* v. *Cooper* (2 B. & Ad. 223) that in such a case the want of registration did not postpone the security to a subsequent registered assignment under a commission of bankruptcy. In *Wright* v. *Stanfield* (27 Beav. 8) Lord Romilly somewhat hastily decided that a written agreement to execute a mortgage on demand was not affected by want of registration, but in a later case of *Moore* v. *Culverhouse* (27 Beav. 639) the same judge held that an instrument operating as an immediate equitable charge was within the Middlesex Registration Act (7 Anne, c. 20). The distinction between an executed and an executory charge by which it was attempted to reconcile these two cases is not very substantial, and in *Neve* v. *Pennell* (2 H. & M. 170) Wood, V.C., was evidently disposed to consider the cases as irreconcileable. The case of *Re Wright's Mortgage Trusts* may help to dissipate any remaining doubt on this point, for it is clearly inconsistent with *Wright* v. *Stanfield*. Equitable charges are frequently effected without professional advice, but in all cases (except that of a simple deposit of deeds without writing) in which such securities affecting land situated in a register county are prepared by the solicitor of the party taking the security, it will obviously be the duty of the solicitor to have the instrument duly registered.

COMMON LAW.

SIGNATURE BY AGENT.

Reg. v. *Kent, JJ.*, Q.B., 21 W. R. 635, L. R. 8 Q. B. 305.

We take this decision as we find it, that a notice of appeal to Quarter Sessions under 12 & 13 Vict. c. 45, s. 1, is sufficient if it is signed *in the name* and by the authority of the appellant or his attorney, though not signed by the appellant or his attorney. The authority on which the Court proceeded was *Reg.* v. *Middlesex JJ.*, (1 L. M. P. 621), where, however, the statute did not direct, as the statute does here, that the notice should be "*signed* by the person giving the same or his attorney;" but only that "reasonable notice be given by the churchwardens or overseers," a circumstance which might seem to make all the difference. It is difficult to reconcile the decision with *Toms* v. *Cuming*, (7 M. & G. 88), under the Registration Acts; and it is a somewhat lame ground of distinction to say that it was the intention of the Legislature, "under that statute that the objector should sign personally." The intention of the Legislature could only be known from its words, and it did not say the notice was to be signed *personally*. The appeal to the common law maxim *qui facit per alium facit per se*, which is the other ground of the decision, fails, because *signing* is an act of a personal nature. We do not see why on this reasoning a will should not be signed by deputy.

NOTES.

The United States Circuit Court has assumed a somewhat novel jurisdiction. Judge Dillon of that Court, we learn from the *Albany Law Journal*, proposes to build a portion of the St. Paul and Pacific Railroad, about two hundred miles in extent. There are some 10,000,000 dols. of the bonds of the road extant, with no other security than the land grants, which grants lapse in December, unless the road be then finished. Judge Dillon has, therefore, appointed a receiver, and authorised him to borrow 5,000,000 dols., and to make the necessary contracts, subject to the approval of the Court, for the completion of the road by December. As a significant indication of confidence in the capacity of the court to build a railroad, it is stated that the holders of the 10,000,000 dols. of bonds, who reside in Holland, gave assurances, on being notified of Judge Dillon's action, that the needed 5,000,000 should be forthcoming at once. Our contemporary is of opinion that it would be to the advantage of those interested in some other projected lines if this example should be followed as to them.

One operation of the Landlord and Tenant (Ireland) Act, 1870, will apparently be to convert the Irish Bench into very fair theoretical agriculturalists. In the appeals from the decisions of the chairmen of quarter sessions, which come before the judges at the assizes, questions with reference to the value and durability of manures hold a prominent place, and it would seem that already some at least of the members of the bench have acquired rather strong convictions on the subject. Thus, in a case at the Tralee Summer Assizes, reported by the *Irish Law Times* (where a

tenant whose total payments for rent during the lease amounted only to £275, nevertheless modestly claimed £225 as compensation, but was awarded £35 by the chairman of quarter sessions, and ultimately obtained on appeal £4), Morris, J., expressed an opinion which, if concurred in by the bench in general, ought to put a stop to the use of certain kinds of fertilisers by Irish tenants. His Lordship expressed an opinion that the greatest chemist who ever lived could not at the end of ten years detect even the smell of lime." That appears to be probable, but could the greatest chemist who ever lived detect the smell of any manure ten years after it had been applied? As to nitrate of soda, which the learned judge termed "artificial stuff," he was very decided in his disapprobation. "It only serves," he said, "to enliven and stimulate it (the land) for a year or two, after which sweating it is in a worse condition than it was before." Putting nitrate of soda into land is not at all the same thing as putting sound, substantial, and lasting manure into it."

The *New York Daily Register*, in a recent article, discussed the causes of the decrease in the business of the Courts, of which it appears complaints are rife on the other side of the Atlantic.

"We hear from all parts of the country," says our contemporary, "complaints as to the falling off of legal business. Indeed, this matter alarms many of our leading lawyers, and they are earnest in their discussion of the causes of this decline. It would be well to make this the theme of discussion by our law associations everywhere Certainly the profession is in some degree responsible for the partial withdrawal of the confidence of the public in the efficiency of legal process for the maintenance of personal rights, and the enforcement of contracts. It is, doubtless, true that the average intelligence of the people is higher now than at former periods, and that by the observance of business rules they avoid causes of litigation. But this will not answer fully for the present state of law practice, either in this city or elsewhere. Many very intelligent persons are litigants, and confess that they find it necessary to vindicate their rights through the Courts because other intelligent parties endeavour to defraud them.

"It may also be true that although law business has not increased in due proportion to our increase of population and prosperity, yet that our means of trying causes have remained about the same, and on this account complaints about the law's delay have multiplied.

"But the answer is still incomplete. The fact is, the profession has not kept pace with the improvements of our times, and has clung too tenaciously to mere forms. We do not know that we can better express our idea than by saying that lawyers, as a class, lack *snap*. Time is the principal criterion by which our merchants and business men determine what shall be their action in a particular case. How long is it going to take? is their first and deciding question. There is too much plodding done by Court and Bench. The pleadings are diffuse, the arguments too much elaborated, and the opinions of the Courts so voluminous as to cause litigants to settle their differences as best they may, rather than wait. We want more high-pressure movement, quicker action, and more decisive judgments. But most of all, we want a lesser variety and a greater number of Courts of concurrent jurisdiction."

A SERIOUS STATE OF THINGS.—It is a well-known thing in California, says a correspondent of the *Times*, that whenever a woman is concerned in a trial before a jury she is sure to have their sympathy, no matter what her offence may be, so long as there is a male on whom to wreak vengeance. In the case of the notorious Mrs. Fair, who some time since killed Judge Crittenden in the midst of his family, the sympathy of the public was entirely against the murdered man, and an ignorant jury acquitted the assassin. Again, in all criminal cases it is generally acknowledged that the rich can escape the punishment of their offences however great they may be, though the same rule does not apply to the poor, who in one or two instances have latterly been made an example of, the crime of murder having become so general as to demand some sacrifice to the laws of the land.

REVIEWS.

An Index of the Cases Overruled, Reversed, Denied, Doubted, Modified, Limited, Explained, and Distinguished by the Courts of America, England, and Ireland from the earliest period to the present time. By MELVILLE M. BIGELOW, author of "The Law of Estoppel," &c. London: Stevens & Haynes; Boston: Little, Brown & Co. 1873.

This is obviously not a book to be tried by the ordinary rules of criticism. In the first place, no critic can pretend to pronounce confidently upon its accuracy. All he can do is to try it by looking up a number of cases on branches of law with which he happens to be specially familiar, and from the result of this investigation to form an idea of the value of the work. Applying this test, we are enabled to report very favourably of Mr. Bigelow's diligence and care. It would not be difficult, indeed, to point out cases on which doubt has been thrown, and even cases which have been overruled, which are not to be found in the book; but omissions are unavoidable in the carrying out of so vast a work as that undertaken by Mr. Bigelow, and the wonder is, not that cases have been overlooked, but that so many have been collected. "All the reports," says the author, "American and foreign, have been examined, and, for the most part, page by page. No doubt cases have been overlooked—probably some important ones; no doubt others have been mislaid and omitted in the no slight task of arranging alphabetically the twenty thousand cases of the manuscript. But no effort has been spared to make the collection complete, and the omissions which may be discovered can hardly be counted less than inevitable." So far as our investigation of the book has gone, we are inclined cordially to agree in this last statement.

One chief danger in a work of this kind is any approach to rashness in pronouncing, except upon unmistakeable grounds, that a case has been overruled. So far as we can ascertain (and we have tried the work on several cases alleged in sundry text books to be overruled, but in reality distinguishable), Mr. Bigelow is eminently free from this undesirable characteristic. He employs an ingenious gradation of phrases to represent the various degrees of doubt thrown upon cases. "Overruled" or "reversed"; "denied," "*contra*," "doubted," "*dictum* overruled," "*dictum* denied," apparently apply to the less equivocal cases of inconsistency, while the word "see" is prefixed to cases which may seem to limit, modify, or explain the doctrine laid down in the principal case. Mr. Bigelow warns his readers that the work is an index merely, and is to be used only as a *guide* to the authorities. That is, of course, obvious; but it appears to us that to attempt more than this would be of little value to the profession; since each practitioner will desire to judge for himself how far the doctrine laid down in any particular case has been altered or modified. What he really needs is a reference to the subsequent cases in which the doctrine has been doubted, and this we believe he will generally find in Mr. Bigelow's pages. The date of each case mentioned as overruled or questioned is appended to it, and the cases appear to be brought down in the text to 1872, and in the appendix to the present year. We entertain a high respect for the persevering toil of the author, and can only express a hope that it will meet its reward in the success of a book which every lawyer will find it useful to have at his elbow.

A Concise View of the Law relating to the Priority of Incumbrances and of other Rights in Property. By W. G. ROBINSON, M.A., of Oriel College, Oxford, and of the Middle Temple, Barrister-at-Law. London: Stevens & Haynes. 1873.

Legal text books show a tendency to rise from mere indexes of cases, and to exhibit an orderly and scientific arrangement. Mr. Vaughan Hawkins' treatise upon the Construction of Wills, and Mr. Dicey's treatise on Parties to Actions, afford instances of this improvement. Mr. Robinson's book on Priority belongs to the same class. Its plan consists in the statement of a few governing rules explained by judicial exposition of the principles on which they rest, and illustrated by the simplest reported cases.

To each rule is added a statement of the various conditions and exceptions to which it is subject. In Mr. Robinson's opinion "until the prospects of codification are more definitely settled than they are at present, some method of this kind will perhaps be found to be the best available means of simplifying the voluminous complications of case-law. This slender volume," he adds, "has of course none of the exhaustiveness of a treatise. It is designed rather as a slight practical suggestion upon a subject which has a permanent interest—the simplification of the law."

The method adopted by Mr. Robinson requires the law to be enunciated in a series of abstract propositions. This, no doubt, is infinitely better than heaping up *dicta* and marginal notes, generally unconnected, and often inconsistent; but it is not without its special dangers. There is always the risk that the process of generalisation will be carried too far, and that in the attempt to evoke order out of confusion a proposition which serves only to embrace one or two isolated and exceptional cases may be elevated into the dignity of a general principle. An instance of this occurs in the rules given in the present work as to notice. It is correctly stated that "notice to the agent, in order to bind the principal must be notice given to, or acquired by, the agent in the transaction in which the principal employs him." But the following proposition is laid down as constituting an exception to this rule:—"If both parties to the transaction employ the same solicitor, each will be bound by implied notice of whatever the solicitor he so employs knew, or ought to have known, and to have communicated in that capacity, notwithstanding that the solicitor's knowledge was not actually acquired in such transaction." In support of this three cases are cited: *Fuller* v. *Bennett* (2 Hare, 394), *Brotherton* v. *Hatt* (2 Vern. 574), and *Hargreaves* v. *Rothwell* (1 Keene, 154), but in none of these is so unqualified a rule laid down; and the cautious language of Wigram, V.C., in *Fuller* v. *Bennett* (2 Hare, 394), affords a striking contrast to the terms above quoted—"Whatever the solicitor, during the time of his retainer, knows as solicitor for either party, *may possibly, in some cases*, affect both, without reference to the time when his knowledge was first acquired."

The rules as to the consolidation of incumbrances will give a fair idea of the general character of the work. They are as follow:—"Where the same mortgagee holds different securities for different debts, and whether wholly or in part by contract with the mortgagor, or wholly or in part by transfer from the original mortgagees, he may (notwithstanding notice of any subsequent incumbrance) as against the mortgagor, and all persons deriving title from the mortgagor, either before or after such transfer, retain all his securities until he has been paid everything which is due upon the different debts (*Watts* v. *Symes*, 1 De G. M. & G. 240; *Brevor* v. *Luck*, L. R. 4 Eq. 537)." "For the purposes of this rule the securities may (a) be either legal or equitable (*Watts* v. *Symes*, 1 De G. M. & G. 240; *Neve* v. *Pennell*, 2 H. & M. 170); (b) consist either of real or of personal property (*Watts* v. *Symes*, *sup.*). We purposely omit the citations by which the rules are supported.

On the whole, Mr. Robinson's book may be recommended to the advanced student, and will furnish the practitioner with a useful supplement to larger and more complete works.

A Summary of the Law of Torts or Wrongs Independent of Contract. By ARTHUR UNDERHILL, B.A., of Lincoln's-inn, Esq., Barrister-at-Law. London: Butterworths. 1873.

The author's call seems by the *Law List* to be of recent date. We think, therefore, that it would not be fair to him to enter into a detailed criticism of his work, which certainly lacks accuracy and maturity of judgment. The author seems to us to have set himself a too ambitious task, and one with the real difficulties of which he is evidently not acquainted. If we may be allowed to make the suggestion, we would advise him to address himself, when next he writes, to some more limited subject; he will find that to write a good book even on a small subject will be no unworthy employment of his powers, and that the profession will not be grudging in its recognition of a success. We hope that hereafter we may have the opportunity of noticing such a work from his hand in these columns.

WORKS RECEIVED.

Commentaries upon International Law. By Sir ROBERT PHILLIMORE, D.C.L. Vol. 3. Second edition. Butterworths.

A Treatise on the Law, &c., of Parliament. By Sir T. E. MAY, K.C.B. Seventh edition. Butterworths.

APPOINTMENTS.

MR. CONWAY WHITHORNE LOVESY, barrister-at-law, has been appointed to be a Puisne Judge of the Colony of British Guiana. The learned gentleman was called to the bar at the Middle Temple in Michaelmas Term, 1845, and has held the office of Stipendiary Justice at Trinidad.

MR. J. MARRIOTT, B.A., barrister-at-law, has been appointed to act as Judge of the High Court of Judicature, at Bombay, during the absence of the Hon. Mr. Justice Bayley on private leave. Mr. Marriott was called to the bar at the Middle Temple in Michaelmas Term, 1853.

ACCIDENT INSURANCE.

(*Continued from page* 860.)

The only case to our knowledge where, in any court of last resort, the clause, "the party insured is required to use all due diligence for personal safety and protection," has been construed, was decided in New Jersey in 1871. In *Stone* v. *United States Casualty Company*, 5 Vroom. 84 N. J. 471, the assured was building a small barn, and had mounted to the second story to view the work. Stepping on a joist, which had a concealed defect and broke under him, he was killed by falling to the ground. At the time of the accident he had on two overcoats, and was said to be an awkward man. The Court held that it was wholly a question for the jury to decide whether he was exercising due diligence, and that whether he exercised such care as a prudent man should, was properly left to them to find. They add that there was no rashness or exposure in placing himself where he did, and that the breaking of the beam was pure accident.

In *Hoffman* v. *Travellers' Insurance Company*, N. Y. supreme court, Clinton circuit, tried at Plattsburgh, in September, 1871, and reported in the Baltimore *Underwriter*, January 30, 1873, the assured was walking on a railroad track. A signal was given from an approaching engine at quite a distance from him. He then stepped off the track on the side, and then, when the engine had almost reached him, within fifty to a hundred feet, he deliberately went on the track again; and before he got across it, he was struck and killed. A motion was made for nonsuit, on the ground that plaintiff had not established any cause of action. The Court say, "That was a most reckless act. The rule is well settled that a party cannot walk on a railroad track without being guilty of negligence; and the Courts hold that one about to cross the track must look both ways before attempting to cross, and that if he omits to do that he is guilty of negligence. So that it seems to me there is not a possibility of recovering under the proof in the case. The circumstances show that there was gross negligence on the part of the deceased—more so than appears in any case I have had occasion to examine—and as gross negligence as if the man had hanged himself. . . . The very first condition of the policy is that the party insured is required to use all due diligence for personal safety and protection. Now is there a human being that will say that the deceased did use due diligence for his protection? . . . The deceased was where he had no business to be. . . . As the case stands there must be a nonsuit."

In October, 1871, at Elmira, the Supreme Court of New York, Chemung circuit, was again called upon to rule upon the same clause in the unpublished case of *Pratt* v. *Travellers' Insurance Company*. By the terms of the policy, if the assured was guilty of a violation of any rule of any company or corporation, the policy was void; and no recovery could be had in case of wilful exposure or want of due care. The deceased went on the cars, and was passing over a platform between two cars, as the plaintiff contended, or, as the company contended, was standing smoking on the rear platform of the last car, when he fell off and was killed. The Court charged the jury

that, if he fell from the cars while standing there when the train was in motion, and by carelessness on his part, and such carelessness as was in violation of the policy, then the plaintiff could not recover. . . . If he was standing on either platform smoking, or standing there for any purpose whatever, and not passing directly from one car to another, he was in an improper place, in violation of the rules of the railroad company, and guilty of such negligence as would prevent recovery in this case altogether. . . . If he was not standing on the platform, but was passing from one car to another, the last car being a ladies' car, where no smoking was permitted, and was smoking previous to going upon the cars, and was passing from the ladies' car into the next car forward—the smoking car—for the purpose of smoking, then it was for the jury to say whether he was careless or in due care, when in the darkness he was passing from one car to another, situated as these cars were. . . . It was incumbent on the defendants to prove the deceased guilty of negligence. They set up the defence and were required to prove it.

It is believed that these are the only cases which have as yet involved these clauses in direct issue. The paucity of authority and the very modern character of all accident insurance must be our excuse for citing so much *nisi prius* law, but, where there is such a slender stock anywhere, it may be better than none, and convenient for those who are in charge of cases of this character, where the whole land is so nearly an unexplored region.

In England, it was held in 1857, in *Shilling* v. *Accidental Death Insurance Company*, 5 W. R. 567, 2 H. & N. 42, that an accident insurance was within the statute of 14 Geo. 3, c. 48, s. 2, and, like any other insurance on lives, must rest on an insurable interest in the real payee of the policy, and, although the policy was payable to the deceased and the suit brought by his administratrix, it was really for the benefit of another party, who paid the premiums. The statute is not law in America, and the general rules about insurable interest which are held here as to life policies apply undoubtedly to accident insurance.

A. Baum took a policy on his own life payable to N. Baum, and was killed by a gunshot wound. The company denied insurable interest in the payee. It was held that none need to be proved, as every man has an insurable interest in his own life, and he had appointed and the company accepted the payee. *Provident Life Insurance and Investment Company* v. *Baum*, 29 Ind. 236.

Where there is a condition in the policy that questions in dispute shall be referred to arbitration, and the award be a final settlement, and made a rule of court, it is held in England to be a condition precedent, and to require an arbitration in the manner prescribed, and the rule in *Scott* v. *Avery*, 4 W. R. 746, 5 H. L. Cas. 811, applies. *Braunstein* v. *Accidental Death Insurance Company*, 1 Best & S. 782. Where *Scott* v. *Avery* is adopted in this country, it governs, undoubtedly, accident policies which contain the arbitration clause.

In *Rhodes* v. *Railway Passengers' Insurance Company*, 5 Lans. 71, it is decided that a parol contract for accident insurance is enforceable, and makes a complete contract; and an action may be had on the contract to insure, or the contract to issue a policy, and equity would enforce the contract. The rule adopted conforms to the now well-established principle in other insurance, that it may be effected without a written policy, which is not the contract but only evidence of it.

The policies generally provide that, in order to earn the stipulated compensation for death, the assured must die within ninety days from the happening of the accident. In *Perry* v. *Provident Life Insurance and Investment Company*, 99 Mass. 162, the insured was station agent on a railroad, and was crushed between cars. He lived, after the day of the happening of the accident, ninety days and nine hours, and his life was thus prolonged by the extreme devotion and care of his wife. The company set up the defence that he outlived the stipulated period, but made no other defence. The plaintiff contended that *de minimis non curat lex*; that, at all events, it was only ninety days until it was ninety-one days, after the analogy of statute of limitations for taking poor debtors' oaths, but that really the policy running for a year made the effect of the limitation to be only a provision for the final termination of liability at the end of ninety days after the year expired. The court, however, construed the policy strictly, and held that the assured lived too long for compensation to be recovered for the death.

The plaintiff then sued the company on the other branch of the policy, and claimed indemnity for ninety days of total disability under the other clause. But the defendant corporation, which appears by the reports to have ever showed a cheerful disinclination to pay anybody any thing, contended that it was not liable to pay indemnity for weekly disability, because the policy stipulated in this second clause that it was to pay indemnity for an accident which should not be fatal; and, as the assured had died at last, it was not bound to pay indemnity any more than compensation. But the Court held that the two clauses were to be taken together, and, if the company was not liable on the first branch, it was on the second. We learn, however, *dehors* the record, that the Provident Life Insurance and Investment Company illustrated the difference between a judgment and a satisfied execution, and became insolvent about that time, and never did pay any part of the indemnity.

The policy of this same company provided that, in case of claim, the assured or his representatives should, when any injury occurred, "as soon thereafter as possible" give notice to the company or its agent of the facts. In *Provident Life Insurance and Investment Company* v. *Martin*, 32 Md. 310, the accident and death occurred on July 21. *Within less than a week after*, the widow reported the death to the company's agent, who had already heard of the accident. She then proceeded to get affidavits on August 18 and 28 and September 4, which were received by the agent and forwarded to Chicago, to the home office, about the latter date. The company contended that notice was not given soon enough, but the Court say that this question was properly left to the jury to decide, who found for the plaintiff, and the Court add: "If it were a matter of law, our judgment thereon would coincide with the conclusion the jury must have reached."

The same company made a policy on the life of Americus Baum, payable to Napoleon Baum. The assured died by a gunshot wound. Notice of the death was to be given to the company "as soon thereafter as possible." Napoleon never saw or had possession of the policy until eight or ten days after the death of the assured, when he immediately gave notice to the company. The company then delivered him blank affidavits, with statements that it would be sufficient if he returned them within three or four weeks, which he did. The Court held that the notice was given in a reasonable time. *Provident Life Insurance and Investment Company* v. *Baum*, 29 Ind. 236.

We have dwelt on the history of this company as it appears in the reports, because its proceedings became notorious, and tended to bring general discredit upon the whole business of accident insurance and honest contemporaries. This company evidently rushed into business without the knowledge how, if it had the intent, to work fairly or give honest value. It is preeminent in litigation of the most pettifogging description, and should fairly carry the responsibility of its own acts.

In Ireland, the Accident Assurance Company made it a condition precedent to the right to recover, that a notice specifying particulars of the accident should be delivered at the chief office of the company in London within seven days of its occurrence. The wording was explicit. John Gamble was insured and was suddenly drowned, and it was impossible for the assured or his representatives to fulfil the terms of the notice within the time specified. But it was held that the provision for the notice applied, as the terms of the policy negatived any presumption which could relieve the condition by implying that such sudden destruction should absolve the performance of the condition. *Gamble* v. *Accident Assurance Company*, Irish Rep., 4 Com. Law, 204. This case was held to come within the rule that, when a party by his contract creates a duty or charge upon himself, he is bound to make it good, because it is his own voluntary contract; although where the law imposes such a duty, and the party is disabled from performing it without any fault of his, the law may excuse him. *Paradine* v. *Jane*, Aleyn, 26.

A verdict was given for defendant. Plaintiff applied for reversal on the evidence. But the Court refused the application because the only foundation for it was the plaintiff's own testimony. *Potter* v. *Accident Insurance Company* 29 Ind. 210 (1867).

Cross v. *Railway Accident Assurance Company*, London *Times*, July 21st, 1871, cited in Mr. Bliss' excellent book on life insurance, § 449, appears to be only a case of controverted fact whether death was caused from an accident or by disease.

The measure of damages in cases where indemnity is payable for injury is not the proportion which the injury bears to the amount payable for loss of life, nor does it include a claim for loss of time and profits, which is the same thing, but the assured is to recover indemnity for the expense and pain and

loss immediately connected with the injury without taking in the remote consequences, and without exceeding in any event the total sum payable in case of death. *Theobald* v. *Railway Passengers' Assurance Company*, 2 W. R. 528 (1854). This is the English rule, but it is unimportant in this country, because it is the universal custom to measure this indemnity by a fixed sum payable for the weeks of total continuous disability from all work.

What constitutes total disability under these circumstances is very fully and admirably discussed in *Hooper* v. *The Accidental Death Insurance Company*, 8 W. R. 616, 5 H. & N. 546 (1860). The plaintiff was a solicitor, and while riding on horseback severely sprained his right ankle. On the same day he called in a surgeon, under whose care he remained for upwards of six weeks. For four weeks he was confined to his bedroom and the adjoining room on the same floor, and was unable to walk or stand, and for the next two weeks he could not leave the house. The plaintiff was able to write letters, read law, and the like, while lying on the couch, but was unable to attend business which could not be transacted in his house. The policy allowed five pounds per week for accidents which "shall cause any bodily injury to said insured of so serious a nature as wholly to disable him from following his usual business, occupation or pursuits." The plaintiff claimed for four weeks total disability. The defendants contended that he must be so disabled that the surgeon would forbid his doing any business at all, and said, if he had been a dancing-master, he might be said to be totally disabled. But so long as he could do any part of his work by himself or his clerk, he was not totally disabled, but only partially disabled. The plaintiff replied that partial disability as distinguished from total disability was, where a man was able to carry on his business though with more or less inconvenience to himself.

Pollock, C.B., said that there was no sound distinction between the case of a dancing-master and an attorney. For, if the dancing-master could not dance, he might play an instrument and teach others how to use their limbs in dancing, and an attorney, prostrate, deprived of sense and motion, might, to some extent, by partners and clerks, carry on his business. And he held that, if the plaintiff was wholly disabled from carrying on his business as he usually carried it on, the company would be liable.

The case was then carried to the Exchequer Chamber, and the judgment affirmed.

In *Rhodes* v. *Railway Passenger Insurance Company*, 5 Lans. 71, 77, under a similar clause, total disability to labour was required to be shown, but the measure of it was not discussed.

The only reported American case where this question is discussed, is *Sawyer* v. *The United States Casualty Company*, 8 Am. Law Reg. N. S. 233, in which, after discussion of *Hooper's Case*, Reed, J., held that the words "totally disabled from the prosecution of his usual employment," in an accident policy, meant disabled from doing substantially all kinds of the plaintiff's accustomed labour to some extent, and that the assured must be deprived of the power to do to any extent substantially all the kinds of his usual labour.

In the present policy in use by the Travellers' Insurance Company the condition is, "which shall independently of all other causes immediately and wholly disable and prevent him from the prosecution of any and every kind of business."

Stress is laid here on immediate disability caused by accident, in order to avoid remote claims for subsequent disability arising from mixed causes, and total disability sufficient to occasion the entire loss of business time, in consequence of his injuries. But the new clause has not yet been judicially construed in any reported case, and, while in terms very stringent, it would be a question of fact for the jury to decide whether the assured was totally disabled, and what was his business, for which he was disqualified; and probably the practical result will be nearly the same construction as that put on the old form.—*American Law Review.*

The system of marks has been introduced in all Bengal gaols for prisoners whose sentences are over two years. There are, of course, many conditions attached to the rules. The remission is never to exceed two months, nor one month for each year of sentence, without sanction of Government. Remission will be of two kinds: unconditional remission, and remission on condition that the prisoner works at some form of honest labour under the superintendence of the magistrate or some public department.—*Bombay Gazette.*

PUBLIC COMPANIES.

GOVERNMENT FUNDS.

LAST QUOTATION, Sept. 12, 1873.

3 per Cent. Consols, 92⅜	Annuities, April, '85 9¼
Ditto for Account, 92⅜	Do. (Red Sea T.) Aug. 1908
3 per Cent. Reduced 90½	Ex Bills, £1000, — per Ct. par
New 3 per Cent., 91½	Ditto, £500, Do —par
Do. 3½ per Cent., Jan. '94	Ditto, £100 & £200, —par
Do. 2½ per Cent., Jan. '94	Bank of England Stock, 4½ per Ct. (last half-year)
Do. 5 per Cent., Jan. '73	
Annuities, Jan. '80 —	Ditto for Account.

INDIAN GOVERNMENT SECURITIES.

India Stk., 10½ p Ct. Apr. '74, 205	Ind. Enf. Pr., 5 p C., Jan. '73
Ditto for Account. —	Ditto, 5½ per Cent., May, '79 103½
Ditto 5 per Cent., July, '80 108½	Ditto Debentures, per Cent., April, '64 —
Ditto for Account, —	Do. Do., 5 per Cent., Aug. '73 101
Ditto 4 per Cent., Oct. '88 102	Do. Bonds, 4 per Ct., £1000
Ditto, ditto, Certificates, —	Ditto, ditto, under £1000
Ditto Enfaced Ppr., 4 per Cent. 96½	

RAILWAY STOCK.

	Railways.	Paid.	Closing Prices.
Stock	Bristol and Exeter	100	120
Stock	Caledonian	100	94½
Stock	Glasgow and South-Western	100	120
Stock	Great Eastern Ordinary Stock	100	40¼
Stock	Great Northern	100	129½
Stock	Do., A Stock*	100	147½
Stock	Great Southern and Western of Ireland	100	114
Stock	Great Western—Original	100	122
Stock	Lancashire and Yorkshire	100	144½
Stock	London, Brighton, and South Coast	100	81
Stock	London, Chatham, and Dover	100	21½
Stock	London and North-Western	100	145
Stock	London and South Western	100	108
Stock	Manchester, Sheffield, and Lincoln	100	76
Stock	Metropolitan	100	71½
Stock	Do., District	100	25½
Stock	Midland	100	132
Stock	North British	100	65¾
Stock	North Eastern	100	164½
Stock	North London	100	117
Stock	North Staffordshire	100	67
Stock	South Devon	100	69
Stock	South-Eastern	100	107

* A receives no dividend until 6 per cent. has been paid to B.

MONEY MARKET AND CITY INTELLIGENCE.

The Bank rate remains unchanged. According to the Bank return there is a decrease of £48,758 in the bullion, of £63,030 in the issue, of £466,500 in the circulation active, and of £41,959 in the Government securities, but an increase of £1,097,907 in the other securities, of £626,597 in the public deposits, and of £862,876 in the other deposits. The total reserve shows an increase of £417,547, and the proportion of reserve to liabilities is about 44½.

The commencement of the week was marked by a general decline in railway stocks, but on Thursday a reaction set in, and the market was very firm at the close, North British closing 2¾ higher. The foreign market has been dull, but within the last day or two there has been more business done, and prices have, generally speaking, been steady.

LEGAL ITEMS.

Mr. W. H. Gladstone at Whitby alluded to the Judicature Bill as a measure which one of the most influential members of the House of Commons (Mr. Henley) had stated to be perhaps the most important Bill passed during the last hundred years.

Under the recent statute (36 & 37 Vict. c. 70) revising barristers are to hold evening sittings in every Parliamentary borough containing, according to the last census, more than 10,000 inhabitants. Such sittings are to commence not earlier than six, nor later than seven, o'clock in the evening.

The trial at Maryborough before the Lord Chief Baron of Ireland, to which we alluded last week, ended on Tuesday last in a verdict of guilty. The case is stated to have been almost unparalleled in complexity and in minuteness of detail. No fewer than 114 witnesses were examined. As the Chief Baron was about to proceed to pass sentence he was interupted by the prisoner saying, "If you are going to sentence me, do it soon and sudden, I am not a bit frightened about it." His Lordship again

endeavoured to proceed, and the prisoner again said "Pass it soon and sudden, and as short as ever you can give it." Subsequently he again interrupted the proceedings, saying, "Make haste, or I'll go down below if you don't hurry. I don't want speeches. If you will talk, I may as well have my half-hour."

THE BANK FORGERIES PROSECUTION.—At the general court of the Bank of England held on Thursday, a resolution moved by Mr. Jones—"That the thanks of the court be presented to Messrs. Freshfield, the solicitors to the Bank, for their ability, energy, and perseverance in conducting to a successful end the prosecution against the American forgers"—was agreed to unanimously. Mr. Freshfield, in thanking the court for the recognition of the services of himself and nephews, said that to Mr. William Freshfield the praise was chiefly due, he having had charge of the whole matter, which could not possibly have been so satisfactorily concluded had it not been for the energy and promptitude displayed by the directors in communicating with, and obtaining assistance from, the Government and various officials whose aid was requisite.

A DIGNIFIED ASSEMBLY.—The *Fiji Times* thus describes the proceedings of the Legislative Assembly:—"The undignified and abrupt termination of the session just closed was only in keeping with the session itself. The proceedings throughout were mixed with much that was farcical, personal, and ridiculous; and the result for good of the session has been—*nil*. The House has been brought into contempt by such absurdities as sending conversation lozenges to the Premier and moving that the 'document' be read; by the solemn assurance of the Premier when he gravely told the House that there were 800 prisoners of war at Nadi, awaiting directions from the Government, but the House had not seen fit to give the Government the necessary power to dispose of them by passing the Martial Law Districts Act. Those 800 prisoners were pigs; and their capture, if such a number were really caught, was used for, we can imagine, no other purpose than that of misleading the House and the country."

BONA FIDE REPORTING.—The *Pall Mall Gazette* mentions a decision which has just been given in Scotland on an action brought against a printer at Beith under the following circumstances. It seems that in November last Robert Campbell, of Benthills, Lochwinnoch, pleaded guilty at a justice of the peace court held in Beith to the crime of poaching and was fined. James Miller, a printer in that place, who publishes a weekly sheet of local news and advertisements, in noticing the conviction used the name of John Campbell by mistake. Robert Campbell has a brother named John Campbell who forthwith raised an action to recover the sum of £100 as *solatium* for the injury he had sustained by this mistaken use of his Christian name. His action, however, has not been successful, and Sheriff Anderson has just delivered judgment, finding "that the pursuer has failed to prove that he has suffered any loss or damage in consequence of the notice; that the defender offered, the moment the mistake was pointed out to him, to rectify the error in the next number of his paper, but with which the pursuer declared he would not be satisfied, unless it was accompanied by a substantial money payment; and that it has not been shown that the pursuer's feelings could have been injured to any extent appreciable in money, and therefore assoilzies the defender from the conclusions of the action, but, in the circumstances of the case, finds no expenses due to either party."

FUNERAL OF MR. CHISHOLM ANSTEY.—The *Times of India* thus describes the scene at the burial of this gentleman:—Mr. Chisholm Anstey was buried at six o'clock last evening (August 14) in Sewree Cemetery. The funeral procession was of immense length, hundreds of carriages forming part of it; and thousands of natives of every class and caste were present at Cumballa Hill, and along the line of route, to testify their respect for the memory of the lamented gentleman and their sorrow for his loss. At half-past four o'clock the coffin was placed in the hearse, and the *cortége* set out. Next the hearse followed the deceased's office gharry, and Dr. Smith, his medical attendant, came after; then some three or four hundred carriages were for the most part filled with native gentlemen. The Parsees formed, as might have been expected, the majority of these, but there were many Hindoos, and some Mussulmans. On foot came great numbers in processional order, six and even eight deep. In some parts there were so many sympathetic lookers-on that the road was blocked, and this somewhat retarded the progress of the funeral. In the meanwhile a considerable number of official personages and others had assembled at the cemetery to await the arrival of the procession. These were the Chief Justice Sir Michael Westropp, Sir Charles Sargent, the Hon. Justices Green, Melville, West, Pinhey, and Marriott, the Hon. the Advocate-General (Mr. A. E. Scoble), &c. The notabilities of the Parsee community who were present were so numerous that it may be said none were absent. Indeed all classes, rich and poor, were there, and many of them could not restrain their tears when the hearse drove up and the coffin was carried into the cemetery. When the coffin was born up the centre walk of the cemetery all who could followed and massed themselves around the piazza. Hundreds of Parsees got inside the little garden as well as the Europeans, and the most respectful demeanour was observed while the Rev. Father Cooke read the funeral service over the body in the chapel. From the chapel the body was taken to the grave, where the service was concluded, and the clergyman and his assistants threw in earth upon the coffin. Captain Henry and two or three other European friends of the deceased performed the same mark of respect. The natives, on seeing this new form of homage to the departed, crowded up, and, with respectful salaams, and not always without tears, threw in handfuls of earth in the same fashion. Thus was soon covered for ever the simple teak coffin and the brass plate which briefly recorded that "Thomas Chisholm Anstey died at Bombay on the 13th August, 1873, aged 57 years."

ESTATE EXCHANGE REPORT.

AT THE GEORGE HOTEL, RYE, SUSSEX.
By Mr. E. DRAWBRIDGE.

Rye—School House Farm, freehold, containing 56a. 3r. 13p.—sold for £3,650.

AT THE WHITE HART INN, EAST RETFORD.
By Mr. J. M. POTT.

Nottinghamshire—Clarborough, plots of arable and grass land, containing 23a. 2r. 22p., freehold—sold for £2,430.

AT THE SARACEN'S HEAD, ASHFORD.
By Mr. R. THOMPSON.

Kent, Brabourne.—Brabourne Water Farm and 207a. 2r. 7p., freehold—sold for £6,850.

Hythe.—Sidehill Cottage and three acres, freehold—sold for £800.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

LYNCH—On September 4, at Maidenhead, Berks, the wife of H. Foulks Lynch, Esq., solicitor, of a son.

MILLER—On August 27, at the Roxburgh Hotel, Charlotte-square, Edinburgh, the wife of John Fisher Miller, Esq., of Lincoln's-inn, barrister-at-law, of a son.

MARRIAGES.

ADDISON—MCKEAND—On September 4, at St. Mary's, Hulme, Manchester, John Addison, Esq., barrister-at-law, to Alice Pilling, elder daughter of Joseph McKeand, Esq., 190, Oxford-road, Manchester.

BANKS—EDWARDS—On September 6, at St. Anne's, South Lambeth, John Lewis Banks, solicitor, to Eliza Sophia, daughter of the late William Henry Edwards, Esq., of Lambeth and Broomfield, Teddington.

COPINGER—STEWART—On September 3, at St. Matthew's Church, Landscove, Walter Arthur Copinger, Esq., of the Middle Temple, barrister-at-law, to Caroline Agnes, eldest daughter of the Rev. T. Inglis Stewart, vicar of Landscove, in the county of Devon.

FORBES—KEMBALL—On August 3, at St. John's, Hackney, Henry Bracey Forbes, solicitor, of Bedford-street, Covent-garden, to Eleanor, only daughter of Wm. Kemball, Esq., of Lawrence-road, Bow.

MACDONELL—HARRISON—On September 6, at the parish church of Beckenham, Kent, John Macdonell, Esq., barrister-at-law, to Miss Agnes Harrison, third daughter of Daniel Harrison, Esq., Shirley House, Beckenham.

POPE—PHILLIPS—On September 10, at Christ Church, Lancaster-gate, Henry M. R. Pope, of Lincoln's-inn, barrister-at-law, to Margaret, eldest daughter of the late Charles Valentine Phillips, Esq., H.E.I.C.S., of Lantern House, West Malling.

DEATHS.

AMYS—On September 8, at Epping, John Dunham Amys, Esq., solicitor, in the 48th year of his age.

BARSTOW—On September 8, at Sandgate, Folkstone, James Barstow, Esq., barrister-at-law.

COOPER—On September 6, at the Mansion House, Bengeworth, Evesham, Miles Manning Beale Cooper, solicitor, of Great Malvern, aged 58 years.

HADDAN—On September 5, at Vichy, France, Thomas Henry Haddan, barrister-at-law, of Highgate and Lincoln's-inn.

WILSON—On September 6, at Eastbourne, James Holbert Wilson, Esq., of the Inner Temple, and 19, Onslow-square, South Kensington, aged 64 years.

LONDON GAZETTES.

Professional Partnerships Dissolved.

TUESDAY, Sept 9, 1873.

Nanson, John, and Richard Henry Clutterbuck, Carlisle, attornies and solicitors. Sept 5

Winding up of Joint Stock Companies.

FRIDAY, Sept 5, 1873.

LIMITED IN CHANCERY.

Metropolitan Consumers Co-operative Association, Limited.—Petition for winding up, and for the removal of the Liquidators, presented, Aug 29, directed to be heard before the M.R., on the first petition day in Michaelmas Term next. Musgrave, Queen Victoria st, solicitor for the petitioners.

Traders Co-operative Association, Limited.—Petition for winding up, presented Aug 29, directed to be heard before the M.R., on the first petition day in Michaelmas Term next. Musgrave, Queen Victoria st, solicitor for the petitioners.

Creditors under Estates in Chancery.

Last Day of Proof.

FRIDAY, Sept 5, 1873.

Slegg, Michael, Munster House, Fulham, lunatic. Sept 29. Suart v Slegg, V.C. Malins. Purkis and Perry, Lincoln's inn fields

Yates, Benjamin, Southwark st, Druggist. Oct 1. Akerman v Yates, M.R. Redpath, Bush lane, Cannon st

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

FRIDAY, Sept 5, 1873.

Andrews, Reuben, Landford, Wilts, Yeoman. Oct 1. Davy and Davy, Fordingbridge

Andrews, Sarah, Landford, Wilts. Oct 1. Davy and Davy, Fordingbridge

Beale, Elizabeth, Fordingbridge, Southampton. Oct 1. Davy and Davy, Fordingbridge

Blackett, Edward Algernon, Wylam Oakwood, Northumberland, Esq. Dec 31. Dees, Newcastle-upon-Tyne

Blount, Elizabeth, Uxbridge, Middlesex. Oct 13. Batt, Uxbridge

Cantrell, John, Butterton, Stafford. Nov 1. Hacker and Allen, Leek

Edwards, Samuel, Chaldon, Surrey. Sept 30. George, Chaldon

Hawkins, Benjamin, Glastonbury, Somerset, Builder. Dec 8. Bulleid, Glastonbury

Hurll, Ann, Fordingbridge, Southampton. Oct 1. Davy and Davy, Fordingbridge

Hurll, George, Fordingbridge, Southampton. Oct 1. Davy and Davy, Fordingbridge

Inverness, Cecilia Letitia, Duchess of, Kensington Palace. Oct 17. Meynell and Pemberton, Whitehall place

Ivall, David James, Victoria st, Westminster, Coach Builder. Dec 31. Rogers and Sons, Victoria st, Westminster

Johnson, John, Coventry, Plumber. Nov 7. Woodcock, Coventry

Jones, Robert Clark, Lahore, East Indies. Oct 17. Withall and Compton, Great George st, Westminster

Ladbury, Rachel, Aston-juxta-Birmingham. Sept 29. Ladbury, Birmingham

Ledbury, Joseph, Trowbridge, Wilts, Timber Merchant. Oct 18. Rodway and Mann, Trowbridge

Marr, Thomas, Stanley terrace, Lower rd, Deptford, Gent. Oct 31. Marchant, Deptford

Matthews, Charles, Earlsland, Devon, Retired Paper Maker. Oct 1. Gidley, Exeter

Nall, Robert, Verulam, Natal. Nov 1. Hacker and Allen, Leek

Ormston, Ralph, Upper Weymouth st, Fruiterer. Nov 10. Goren, South Molton st

Richardson, Mary, Leeds. Nov 1. Barr and Co, Leeds

Roy, Rev Edmund, Westwood near Kenilworth, Warwick. Dec 1. Field, Leamington

Scott, Joseph, Colney Hall, near Norwich, Esq. Oct 17. Vandercom and Co, Bush lane

Shute, Thomas Rock, Watford, Herts, Silk Throwster. Nov 2. Garrard and James, Suffolk st, Pall Mall East

Spurrier, William, Edgbaston, Warwick, Gent. Oct 1. Rowley, Birmingham

Swan, Richard, Newcastle-upon-Tyne, Corn Merchant. Dec 31. Hodge and Harle, Newcastle-upon-Tyne

Tucker, Charlotte, Exeter, Grocer. Oct 1. Gidley, Exeter

Weston, Thomas, Birmingham, Haberdasher. Dec 15. Simcox, Birmingham

White, Henry, St Thomas the Apostle, Devon, Grocer. Oct 1. Fryer, Exeter

Whitton, William, Caswell, Northampton, Gent. Nov 1. Whitton, Towcester

Wilkinson, Joshua, Whitkirk, York, Gent. Nov 1. Barr and Co, Leeds

Woollan, Joseph Minors, Horsham, Sussex, Master Mariner. Sept 29. Medwin and Co, Horsham

Bankrupts.

FRIDAY, Sept 5, 1873.

Under the Bankruptcy Act, 1869.

Creditors must forward their proofs of debts to the Registrar.

To Surrender in London.

Hodges, Willian Henry, Stretham place, Brixton hill, Gent. Pet Sept 3. Murray. Sept 19 at 11.30

Lys, Charles Frederick, King William st, Tailor. Pet Sept 1. Murray. Sept 16 at 12.30

To Surrender in the Country.

Fitzsimons, John, Liverpool, Tailor. Pet Sept 2. Watson. Liverpool. Sept 19 at 12

Gibson, Thomas, Spondon, Derby, Licensed Victualler. Pet Sept 3. Weller. Derby, Sept 25 at 12

Jackson, Job, Salford, Lancashire, Shopkeeper. Pet Sept 1. Hulton. Salford, Sept 17 at 11

Lee, John, Coventry, Silk Throwster. Pet Sept 3. Kirby. Coventry, Sept 16 at 12

Lichfield, William, Anerley, Surrey, Market Gardener. Pet Aug 29. Rowland. Croydon, Sept 19 at 2

Renton, Mary Anne, and Albert Kidder, Birmingham, Outfitters. Pet Sept 3. Butcher. Birmingham, Sept 23 at 12

TUESDAY, Sept 9, 1873.

Under the Bankruptcy Act, 1869.

Creditors must forward their proofs of debts to the Registrar.

To Surrender in London.

Bransby, David, Mincing lane, Tea Dealer. Pet Sept 5. Murray. Sept 24 at 12

Chappell, William, jun, Union ct, Old Broad st, Silk Merchant. Pet Sept 6. Murray. Sept 24 at 1

Lloyd, Charles Abraham, Cornhill, Stock and Share Dealer. Pet Sept 5. Murray. Sept 24 at 12.30

Sorano, E , Fenchurch st, Banker. Pet Sept 6. Murray. Sept 25 at 11

To Surrender in the Country.

Billson, Charles, Leicester, Wine and Spirit Merchant. Pet Sept 4. Ingram. Leicester, Sept 22 at 12

Corfield, John, Rhyl, Flint, Inkeeper. Pet Sept 5. Jones. Bangor, Sept 27 at 12.30

Patterson, Thomas, Plymouth, Devon Jeweller. Pet Sept 6. Shelly. East Stonehouse, Sept 20 at 11

Roberts, Sir Randall H , Kingston-upon-Thames, Bart. Pet Aug 30. Bell. Kingston-upon-Thames, Nov 8 at 11.30

BANKRUPTCIES ANNULLED.

FRIDAY, Sept 5, 1873.

Horne, Horace, Upper Bedford pl, Russell square. Sept 4

Liquidation by Arrangement.

FIRST MEETINGS OF CREDITORS.

FRIDAY, Sept. 5, 1873.

Armitage, Henry, Heckmondwike, York, Carpet Manufacturer. Sept 18 at 3 at the Refreshment rooms, Mirfield Station. Sykes, Heckmondwike

Bairstow, Jonathan, Ovenden Cross, York, Clogger. Sept 10 at 3 at offices of Rhodes, Horton st, Halifax

Bartlett, Charles, Charles st, Hatton garden, Agent. Sept 20 at 10 at offices of Aird, Eastcheap

Billett, Frederick, Park lane, Piccadilly, Saddler. Sept 19 at 12 at the Inns of Court Hotel, High Holborn. Peacock and Goddard, South square, Gray's inn

Birt, Charles Edward, Millwall Docks, Carman. Sept 22 at 2 at offices of Blachford and Riches, Great Swan alley, Moorgate st

Bottomley, Samuel, and Alfred Broadbent, Leeds, Woollen Manufacturers. Sept 16 at 3 at offices of Barr and Co, South parade, Leeds

Brett, Daniel, Sprowston, Norfolk, Commission Agent. Sept 15 at 2 at offices of Stanley, Bank Plain, Norwich

Bulley, Edward, Shaldon, Devon, Ship Builder. Sept 17 at 12 at the Royal Hotel, Teignmouth. Pearson and Whidborne, Dawlish

Burgess, William Ornby, Dulwich rd, Herne hill, no business. Sept 13 at 11 at offices of Nind, St Benet place, Gracechurch st

Burridge, William, Whitechapel rd, Hatter. Sept 18 at 12 at offices of Jones and Hall, King's Arms yard

Barrows, James, Gloucester, Commission Agent. Sept 19 at 3 at office of Smith, Regent st, Cheltenham

Bush, Thomas Samuel, Norwich, Optician. Sept 18 at 12 at offices of Jay and Pilgrim, Tolls court, Briggs st, Norwich. Pilgrim

Churchley, Henry, Cheltenham, Gloucester, Upholsterer. Sept 16 at 12 at offices of Boodle, Bedford buildings, Cheltenham

Clark, Henry, Wallington, Surrey, Builder. Sept 22 at 2 at the Guildhall Coffee house, Gresham st. Young, Gray's inn square

Clowes, Richard, Drummond st, Euston square, Tailor. Sept 19 at 11 at offices of Perrin, King st, Cheapside

Coe, Joseph, Diss, Norfolk, Milliner. Sept 24 at 2 at offices of Chittock, Bank st, Norwich

Cooper, John, and Richard Jackson Denton, Halifax, Wool Dealers. Sept 17 at 2 at the Griffin Inn, George st, Halifax. Jubb, Halifax

Crosbie, John George, Southport, Lancashire, Clerk. Sept 17 at 2 at offices of Hime and Co, Lord st, Liverpool. Bateson and Co, Liverpool

Crosland, William, and Henry Crosland, Huddersfield, York, Woollen Cloth Manufacturers. Sept 15 at 3 at the White Hart Inn, Cloth Hall st, Huddersfield. Ramsden

Denham, Joseph Alexander, Preston, Lancashire, Bookseller. Sept 18 at 3 at the Temperance Hotel, Lune st, Preston. Taylor, Preston

De Ponthieu, Prince Julius Sullivan de Vismes st, Romsey, Hants, Gent. Sept 19 at 12 at offices of Killby, Portland st, Southampton

Eden, John, Stockton-on-Tees, Durham, Tailor. Sept 20 at 11 at office of Hunton and Bolsover, Finkle st, Stockton-on-Tees

Edwards, John, Camden Park rd, Attorney. Sept 30 at 2 at offices of Heathfield, Lincoln's inn fields

Faulkner, William Gibson, Navarino grove, Dalston, Clerk. Sept 13 at 3 at offices of Jacob, Bedford row

Flashman, George Tarring, New Cross rd, House Decorator. Sept 24 at 1 at offices of Dubois, Gresham buildings, Basinghall st. Moss and Son, Gracechurch st

Flint, John, Steeple Gidding, Huntingdon, Farmer. Sept 18 at 11 at the George Hotel, Huntingdon. Hunnybun

Foot, Henry William, and John Forse, Shrewsbury, Salop, Painters. Sept 17 at 11 at the George Hotel, Shrewsbury. Morris, Shrewsbury

Ford, William Carill, Plymouth, Devon, Jeweller. Sept 18 at 12 at office of Gibson and Moore, Courtenay st, Plymouth. Wilson

Fraser, James, and George Prudhoe, Sunderland, Durham, Contractors. Sept 18 at 1 at offices of Hall, Villiers st, Sunderland

Freeman, Walter, West Wycombe, Buckingham, Butcher. Sept 22 at 12 at offices of Fell, Bourbon st, Aylesbury

Garsed, Joseph, Elland, York, Chemist. Sept 22 at 11 at offices of Norris & Co, Townhall chambers, Halifax

George, Thomas, Hereford, Grocer. Sept 18 at 11 at offices of Corner, High Town, Hereford

Gifford, Charles, Peel grove Mills, Bethnal Green, Braid Manufacturer. Sept 30 at 12 at offices of White and Co, King st, Cheapside. Maitland, Knightrider st, Doctors' commons

Godbold, Robert Aldous, Earsham, Norfolk, Farmer. Sept 22 at 12 at offices of Tewson, Bridge st, Bungay. Chittock, Norwich

Godwin, Thomas, Freemantle, Hants, Grocer. Sept 23 at 2 at offices of Killby, Portland st, Southampton

Gribble, Ann, Teignmouth, Devon, Boot Maker. Sept 19 at 11 at office of Daw, jun, Gandy st, Exeter

Haycock, Ephraim, Harborne, Stafford, Carpenter. Sept 13 at 10 at offices of East, Colmore row, Birmingham

Heron, Thomas, Colchester st, Paddington, Cheesemonger. Sept 23 at 2 at offices of Cooper, Portman st, Portman square

Heldsworth, James, Handcroft rd, Croydon, Timber Merchant. Sept 24 at 12 at the Greyhound Hotel, High st, Croydon. Parry

Hull, John, Manchester, Contractor. Sept 29 at 2 at offices of Cobbett and Co, Brown st, Manchester

Inson, Selina, Paddington green, Cab Proprietress. Sept 17 at 4 at offices of Ablett, Cambridge terrace, Hyde Park

Jarris, Edwin, Hilperton, Wilts, Farmer. Sept 18 at 11 at offices of Shrapnell, Bridge st, Bradford-on-Avon

Jenkins, John Edward, Bradford, York, Schoolmaster. Sept 23 at 11 at offices of Harris, Market st chambers, Market st, Bradford

John, David, Swansea, Glamorgan, Publican. Sept 18 at 2 at offices of Clifton and Woodward, Wind st, Swansea

Jones, Evan, Bethesda, Carnarvonshire, Tailor. Sept 15 at 1.30 at the Liverpool Arms Hotel, Chester. Roberts, Bangor

Keyworth, John Robert Haldenby, and Henry Joseph Keyworth, Liverpool, Engineers. Oct 1 at 2 at offices of Banner and Son, North John st, Liverpool. Gill, Liverpool

Lacy, John, Liverpool, Merchant. Oct 2 at 2 at offices of Harmood and Co, North John st, Liverpool. Hull and Co, Liverpool

Mullins, George, Southampton, Railway Policeman. Sept 13 at 12 at offices of Guy, Albion terrace, Southampton

Oliver, William, High rd, East End, Finchley, Marble Mason. Sept 12 at 2 at 145, Cheapside. Arnold, Finsbury pavement

Parrett, Joseph, Winsford, Cheshire, Grocer. Sept 18 at 1 at the Royal Hotel, Crewe. Green and Dixon, Northwich

Patterson, William, Berwick-upon-Tweed, Slater. Sept 19 at 2 at office of Weddell, Berwick-upon-Tweed

Peplow, Francis Young, Ironbridge, Salop. Sept 18 at 10 at offices of Osborne, New st, Shifnal

Proust, Henri, Baker st, Portman square, Hair Dresser. Sept 16 at 2 at offices of Barnett, New Broad st

Richardson, John, Devonport, Devon, Provision Merchant. Sept 11 at 11 at offices of Vaughan, St Aubyn st, Devonport

Shute, Frederick Gay, Leek, Stafford, Auctioneer. Sept 18 at 2 at offices of Hacker and Allen, St Edward st, Leek

Stone, Elijah, South Eston, York, Draper. Sept 19 at 3.30 at office of Hunt and Son, Portland st, Manchester. Bainbridge, Middlesborough

Stubbings, William, Attleborough, Norfolk, Cattle Dealer. Sept 15 at 4 at offices of Stanley, Bank Plain, Norwich

Thomas, John Arthur, Bath, Wheelwright. Sept 17 at 12 at offices of Wilton, Westgate buildings, Bath

Tipping, George, Southport, Lancashire, Hatter. Sept 24 at 3 at office of Sadler, Lord st, Southport

Tomkins, William Henry, Ventnor, Isle of Wight, Printer. Sept 24 at 3 at office of Ury, High st, Ventnor

Walley, John, Burslem, Stafford, Wheelwright. Sept 12 at 10 at the Royal Hotel, Crewe. Tomkinson, Burslem

Ward, Peter Chantler, Bolton, Lancashire, Cotton Spinner. Sept 17 at 11 at offices of Wolfenden and Naylor, Acresfield, Bolton. Bailey and Read

Wells, Arthur, Worcester, Dentist. Sept 22 at 3 at offices of Pitt, High st, Worcester

Wells, William, Saltfleetby, Saint Clements, Lincoln, Farmer. Sept 16 at 11 at offices of Collyer and Co, Bedford row. Wood, Louth

Whincop, Robert, Lowestoft, Suffolk, Plumber. Sept 19 at 12 at the Royal Hotel, Norwich. Wiltshire, Great Yarmouth

Wilde, Henry, Wells st, Oxford st, Merchant's Clerk. Sept 25 at 1 at the Guildhall Tavern, Gresham st. Biller, Fenchurch st

Williams, David Morgan, Pembroke Dock, Pembroke, Grocer, Sept 13 at 10.5 at the Guildhall, Carmarthen. Parry, Pembroke Dock

Windover, George Henry, Chatham, Kent, Printer. Sept 20 at 11 at offices of Stephenson, Gibralter place, New rd, Chatham

Woodliffe, Alfred, Cardington st, Hampstead rd, Ginger Beer Manufacturer. Sept 13 at 11 at offices of Willis, St Martin's court

TUESDAY, September 9, 1873.

Ashford, Frederick, Milton st, Cripplegate, Packing case Manufacturer. Oct 2 at 12 at offices of Taylor and Jaquet, South st, Finsbury square

Attwood, William, Tewkesbury, Gloucester, Journeyman Painter. Sept 19 at 11 at offices of Moores and Romney, Tewkesbury

Barker, Robert Wood, Liverpool Merchant. Sept 22 at 3 at offices of Forshaw and Hawkins, Sweeting st, Liverpool

Barrett, William, Tunbridge Wells, Kent, Coal Merchant. Sept 19 at 11 at offices of Gorham and Warner, High st, Tunbridge

Beck, Sarah Jane, Liverpool, Draper. Oct 2 at 3 at office of Grace and Co, Cook st, Liverpool

Brabbins, George William, Wolverhampton, Stafford, Hair Dresser. Sept 18 at 11 at offices of Cresswell, Bilston st, Wolverhampton

Brett, Isaac, Aston, Warwick, Clerk. Sept 20 at 12 at office of Fallows, Cherry st, Birmingham

Brew, Thomas Henry, Tipton, Stafford, Grocer. Sept 19 at 11 at office of Travis, Church lane, Tipton

Brown, James, Arlsey, Bedford, Draper. Sept 22 at 12 at office of Conquest, Duke st, Bedford

Chary, Emil, August Gerber, and Jacob Schmitz, Huddersfield York, Woollen Merchants. Oct 1 at 3 at offices of Mills and Mellor, Bryam buildings, Westgate, Huddersfield

Connealy, John, Huddersfield, York, Fancy Toy Dealer. Sept 26 at 3 at offices of Learoyd and Learoyd, Buxton rd, Huddersfield

Corden, William, Great Grimsby, Lincoln, Baker. Sept 22 at 11 at offices of Grange and Wintringham, West St Mary's gate, Great Grimsby

Corkill, Edmund, Bowden, Cheshire, House Decorator. Sept 24 at 3 at offices of Gardner and Horner, Cross st, Manchester

Cowper, John Harland, and Ambrose Ellis Cookson, Liverpool Merchants. Sept 22 at 2 at offices of Tyrer and Co, North John st, Liverpool

Ditchfield, Wright, Lidget, Lancashire, Hide Dealer. Sept 23 at 4 at the King's Head Inn, Church st, Colne. Hartley, Burnley

Gale, Thomas, York terrace, Lower Wandsworth rd, Battersea, Builder. Sept 20 at 3 at the Shakespeare Tavern, Meyrick rd, Clapham Junction

Green, William Henry, George Battersby, and James, Battersby, Halifax, York, Worsted Spinners. Sept 19 at 11 at offices of Holroyde and Smith, Cheapside, Halifax

Groves, John James, Surbiton, Surrey, Corn Merchant. Sept 25 at 4 at offices of Wetherfield, Gresham buildings

Guillaume, Frederick Alfred, Chiswell st, Finsbury, Wholesale Stationer. Sept 17 at 2 at offices of Miller and Miller, Sherborne lane

Hague, John Trickett, Attercliffe, Sheffield, Clerk. Sept 22 at 12 at office of Wilson, Surrey st, Sheffield

Hardy, William Thomas, Cheltenham, Gloucester, Bookseller. Sept 18 at office of Nichols and Leatherdale, Old Jewry chambers (in lieu of the place originally named)

Harris, Hyman Ellis, Hampstead rd, Upholsterer. Sept 20 at 2 at 99, Cheapside. Lewis and Lewis, Ely place, Holborn

Harrison, William, Hillsborough, Ecclesfield, York, Book keeper. Sept 18 at 2 at offices of Machen, Bank st, Sheffield

Haynes, William Henry, Leamington Priors, Warwick, Tailor. Sept 23 at 1 at offices of Wright, Dormer place, Leamington Priors

Henry, Albert Charles Clements, Warnford court, Throgmorton st, Stock and Share Broker. Sept 2 at 24 at the London Tavern, Bishopsgate st Within. Clark and Co, Gresham House, Old Broad st

Hirst, Kark, and George Hirst, Sheffield, Printers. Sept 26 at 12 at offices of Auty, Queen st, Sheffield

Hodgson, Elizabeth, Wakefield, York, Shopkeeper. Sept 20 at 11 at offices of Wainwright and Co, Crown court, Wakefield

Jones, Henry, Swansea, Glamorgan, Grocer. Sept 22 at 3 at offices of Howard, Quay parade, Swansea

Jugla, Alfred, Crown buildings, Queen Victoria st, Glover. Sept 25 at 2 at offices of Honey and Co, King st, Cheapside. Rooks and Co, King st, Cheapside

Kennedy, Walter, Sproughton, near Ipswich, Suffolk, Brewer. Sept 23 at 2 at the London Tavern, Bishopsgate st. Miller and Gane, Gracechurch st

Kilvington, James, Leeds, Boot Maker. Sept 22 at 3 at offices of Fawcett and Malcolm, Park row, Leeds

Lichtenberg, Christian Adolph, Liverpool 1, Merchant. Sept 26 at 2 14, Cook st, Liverpool. Martin, Liverpool

Lubbuck, John Edward, Clitheroe, Lancashire, Upholsterer. Sept 23 at 11 at offices of Wheeler and Co, Market place, Clitheroe. Hothersall, Clitheroe

Mitchell, Joseph, Caledonian rd, Tobacconist. Sept 17 at 2 at offices of Silberberg, Cornhill

Morphett, Frederick Wood, Moorgate st, Accountant. Sept 15 at 2 at offices of Brown, Basinghall st. Watson, Basinghall st

Nankivell, William, Penzance, Cornwall, Refreshment house Keeper. Sept 20 at 11 at offices of Trythall, Clarence st, Penzance

Newbegin, William, Ryton, Durham, Farmer. Sept 22 at 2 at offices of Joel, Newgate st, Newcastle-on-Tyne

Norman, Frederick, Coulsdon, Surrey, no occupation. Sept 23 at 2 at the Inns of Court Hotel, High Holborn. Parke

Peacy, William George Henry, Grosvenor rd, Highbury New Park, Grocer. Sept 25 at 2 at offices of Challis, Clement's lane, Stubbs, Eastcheap

Pippett, Samuel, Gloucester, Draper. Sept 23 at 10.30 at offices of Boodle, Bedford buildings, Cheltenham

Rogers, Samuel, Falmouth, Cornwall, Builder. Sept 20 at 3 at offices of Tilley and Co, Falmouth

Scarlett, Charles, Lowestoft, Suffolk, Plumber. Sept 16 at 11 at offices Banks, Coleman st (in lieu of the place originally named)

Smith, Edward, Cornhill, Stock Broker. Sept 25 at 2 at office of Lewis, Cheapside

Smith, Joseph, Morley, near Leeds, Cloth Manufacturer. Sept 23 at 2 at offices of Granger, Bank st, Leeds

Smith, Michael, Leicester, Grocer. Sept 22 at 2 at offices of Fowler and Co, Hotel st, Leicester

Stewart, James, Kingston-upon-Hull, Licensed Victualler. Sept 22 at 2 at offices of Laverack, County buildings, Kingston-upon-Hull

Tappenbeck, John Frederick Augustus, and August Lorenz Christiansen, Liverpool, Merchants. Oct 3 at 1 at 14, Cook st, Liverpool. Hull and Co, Liverpool

Thompson, George, Scarborough, York, Shoe Dealer. Sept 26 at 2 at offices of Stables, Elders st, Scarborough

Thompson, Wallis, Great Titchfield st, Oxford st, Oil Man. Sept 25 at 2 at the London Tavern, Bishopsgate st. Jennings, Leadenhall st

Trythall, John, Croydon, Surrey, Auctioneer. Sept 22 at 6 at the Greyhound Hotel, Croydon. Hogan, Martin's lane, Cannon st

Twinn, Charles, Sudbury, Suffolk, Gasfitter. Sept 22 at 11 at the Green Dragon Hotel, Bishops gate st. Mumford, Sudbury

Waddon, Joseph, East Reach, Taunton, Somerset, Rope Manufacturer. Sept 23 at 10 at 146, East Reach, Taunton

Whitehead, William, Widnes, Lancashire, Builder. Sept 30 at 11.30 at the Mersey Hotel, Widnes. Clarke, Runcorn

Williams, Edward, Upper Gornal, Sedgley, Stafford, Butter Dealer. Sept 22 at 11 at the Dudley Arms Hotel, Dudley. Gould and Elcock, Stourbridge

Wintle, James Levi, and Ann Wintle, Ledbury, Hereford, Millers. Sept 19 at 11 at offices of Mansfield and Sons, Ledbury